four months of the bankruptcy petition and "the . . . transfer *then* operate as a preference, and the person receiving it . . . shall *then* have reasonable cause to believe that the transfer would effect a preference, it shall be voidable by the trustee." Despite the plausible argument that the use of the word "then" indicates that the preferential character of the transfer is to be tested by its effect when made and that the creditor's belief must be predicated upon the then existing state of affairs, it is believed that the sounder view adopts the second alternative above mentioned, the date of the filing of the petition. This view is persuasively presented in *Rubenstein v. Lottow* (1916) 223 Mass. 227, 111 N. E. 973. It harmonizes with the general policy of determining all bankruptcy questions in so far as possible with reference to conditions as they exist when the petition is filed. *Cf. Everett v. Judson* (1913) 228 U. S. 474, 477, 33 Sup. Ct. 568, 570. It has the practical advantage of testing all preferences by the conditions existing at a given time, instead of requiring the court in the case of successive preferences to investigate the precise ratio of the bankrupt's debts and liabilities at numerous dates within the four months' period. It is consistent with the language of the Act for by treating "preference" in 60b as denoting only such transactions as are defined as preferences in sec. 60a it is possible to construe sec. 60b as making voidable only such transfers as operate when made to produce a situation which at the time of bankruptcy will give the transferee an advantage over other creditors. It is quite possible for a creditor to have reasonable cause to believe that the result of the transfer may be an ultimate preference when bankruptcy comes, although not one at the moment.

CONSTITUTIONAL LAW—EXERCISE OF WAR POWER—PROHIBITION ACT.—The complainants, owners of vineyards in California, who used their crops for the manufacture of wines, sued for an injunction, *pendente lite,* against the United States District Attorney and a Collector of Internal Revenue for district of New York, to prevent seizures and prosecutions under the Act of Congress of November 21, 1918, commonly known as the War-Time Prohibition Act. This complaint was based on the ground that the enforcement of the act was unconstitutional inasmuch as the emergency justifying an exercise of war powers was over. *Held,* that the injunction should not be granted. *Scatena, Lawson & Perelli v. Caffey and Edward* (1919, S. D. N. Y.) N. Y. L. J. 1555.

The Act of November 21, 1918, was passed as a war measure and has been held a valid exercise of the war power. *Jacob Hoffman Brewing Co. v. McEllicott and Caffey* (June 26, 1919) C. C. A. 2d, October Term, 1918. Since the war power is vested in Congress and the Executive Department for the duration of the war, before holding an exercise thereof invalid, the courts would have to hold that the war is over. But the ends of wars have in the past been determined by the Political Department of the Government. *Conley v. Calhoun County Supervisors* (1868) 2 W. Va. 416. The civil war was terminated in the different states by a series of Presidential Proclamations. *United States v. Anderson* (1869, U. S.) 9 Wall. 56; *The Protector* (1871, U. S.) 12 Wall. 100. The Spanish-American war, a foreign war, was ended by the signing of the treaty of peace, the protocol, similar to the armistice of 1918, having no operative legal effect. *Nephews v. U. S.* (1908) 43 Ct. Cl. 430; *McLeod v. United States* (1910) 45 Ct. Cl. 339. In either case the courts take judicial notice of the acts of the other departments. No cases have been found where courts have admitted evidence to dispute the facts they are bound to know. The attitude of the judicial department has been that it was a question for the other departments to determine, and the inference is strong that no

evidence would be admitted. See *Philips v. Hatch* (1871, C. C. D. Iowa) 1 Dill. 571; *In re Wulzen* (1916, S. D. Oh. E. D.) 235 Fed. 362, 365. If no evidence is admitted, the knowledge of the courts is limited to what they judicially notice. One court found in the President's speech to Congress of November 11, 1918, in which he declared that "The war thus comes to an end," an official declaration which could be noticed. *United States v. Hicks* (1919, W. D. Ky.) 256 Fed. 707. But nowhere else has it been given such significance. The conclusion seems warranted that, until the other departments act, the judiciary must continue to recognize the existence of a state of war, and to consider an exercise of the war power as valid. If this be true, the other departments can alone terminate the period within which these special powers are theirs.

CONSTITUTIONAL LAW—TREATIES—EFFECT ON STATE LAWS.—A treaty between the United States and Great Britain provided that the citizens of each of the contracting nations might dispose of their personal property within the jurisdiction of the other and that the heirs or legatees, who are either resident or non-resident citizens of the contracting nations, should succeed to personal property and pay the same duties as the citizens of the country where the property is located would have to pay in similar cases. A state statute imposed upon non-resident aliens a larger tax than that levied upon the state citizens and resident aliens. *Held,* that as against citizens of Great Britain, the tax in excess of that imposed upon the citizens of the state was invalid. *Trott v. State* (1919, N. D.) 171 N. W. 827.

The effect of treaties on existing state laws was a question presented to the Supreme Court soon after the formation of the Union. *Ware v. Hylton* (1796, U. S.) 3 Dall. 199. It has ever since been held that a treaty supersedes and nullifies all conflicting provisions in the constitution and laws of any state, and that whenever there is such a conflict, it is the duty of the judges of each state to uphold and enforce the treaty provisions. See *Whitney v. Robertson* (1888) 124 U. S. 190, 8 Sup. Ct. 456; *Chryssikos v. Demarco* (1919, Md.) 107 Atl. 358. However, in spite of the seeming uniformity of decisions on this point, cases are continually arising in which the effect of a treaty is contested. See *In re Moynihan* (1915) 172 Iowa, 571, 151 N. W. 504 (treaty with England); *Brown v. Peterson* (1919, Iowa) 107 N. W. 444 (treaty with Sweden). The decision in the principal case is obviously sound.

CONTRACTS—ACCORD—SPECIFIC PERFORMANCE.—The plaintiff was indebted to the defendant, who brought suit at law. That case was pending at the time of the instant action. Then they compromised, in writing and under seal, whereby the plaintiff promised that he would pay to the defendant a certain sum on a specific date, and certain monthly installments for the support of the defendant for life; and the defendant promised that, upon receipt of this said sum, she would reassign to the plaintiff certain life insurance policies, indorse to him a check payable to their joint order, and return a will and certain books and documents. The plaintiff duly tendered and demanded performance by the defendant who refused to perform. The plaintiff, who averred continued readiness to perform, then brought this bill in equity for specific performance. *Held,* that this compromise was an accord only, and could not form the basis of an action. Laughlin, J. *dissenting. Moers v. Moers* (1919, App. Div.) 176 N. Y. Supp. 277.

The court followed the ancient common-law doctrine that on an accord no